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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/897,013

07/03/2001

Ariel Peled

01/22083

9188

7590  
Martin D. Moynihan  
PRTSI, Inc.  
P.O. Box 16446  
Arlington, VA 22215

05/15/2008

EXAMINER

JUNG, DAVID YIUK

ART UNIT

PAPER NUMBER

2134

MAIL DATE

DELIVERY MODE

05/15/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/897,013	<b>Applicant(s)</b> PELED ET AL.	
	<b>Examiner</b> David Y. Jung	<b>Art Unit</b> 2134	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 1/30/2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1,5,6,10,14,19,22,24 and 35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1,5,6,10,14,19,22,24 and 35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) 1,5,6,10,14,19,22,24,35 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### **CLAIMS PRESENTED**

Claims 1,5,6,10,14,19,22,24,35 are presented.

### **FILE HISTORY**

Because of the extremely complex situation involving the previous examiner and the previous attorney (inter alia, such as the disbarment of the previous attorney), the current examiner defers to the previous Examiner and the previous Office communications for discussion on many of the issues. Unless actually contradicted by the current examiner, the previous discussion in the file history is hereby given full weight.

### ***Response to Arguments***

Applicant has attempted to state that all claims are fairly based on the provisional application. Yet, Applicant has not pointed to a single sentence in that provisional application which would show that the claims are supported by that provisional application. Upon an independent study of the provisional application, the Examiner has been unable to find any support for the claims.

Thus, the claim of priority must now be denied.

For the other issues, please see the rejections and restrictions sections.

### **CLAIM REJECTIONS AND RESTRICTIONS**

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Regarding claims 1, 5, 6, 10, 14, 19, 22, 24, 35, the claimed invention is directed to non-statutory subject matter. Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See *Diehr*, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because “[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.”). Such a result would exalt form over substance.

Applicant stated that “indication of whether the material being searched for has been found” is a “functionality” and that this “functionality” is “functional” in the sense of MPEP 2106. Applicant is wrong. Any abstract algorithm can indicate and can have searches. For example, note algorithms and data structures of Graphical User Interfaces of database searches. The sole practical application would be in connection with the programming. Thus, this is not “functional” in the sense of MPEP 2106.

For further guidance on the term “nonfunctional”, please see MPEP 2106.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1,5,6,10,14,19,22,24,35 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention. Evidence that claims fail(s) to correspond in scope with that which applicant(s) regard as the invention can be found in the reply filed. In that paper, applicant has stated that a node intrinsically includes a processor, and this statement indicates that the invention is different from what is defined in the claim(s) because Applicant is wrong about the node. Applicant may or may not be referring to a node having a certain type of hardware processor. Regardless, a node does not intrinsically include a processor. A node usually refers to a point on a network on a diagram. A node cannot intrinsically include a processor.

### ***Election/Restrictions***

1. What is meant by this node of the amendment? If this is truly a substantive limitation, one must consider the original restriction (made by the previous Examiner). As Applicant has been notified in that restriction, claims having a node handling in the sense of that restriction should not be in this application. Applicant has already elected away from that invention with that node. Thus, in the alternative, one must note that the election would prohibit the claims.

2. Newly submitted claims are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Applicant has already elected away from that invention with that node.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims shall be withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,5,6,10,14,19,22,24,35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown

([http://archive.salon.com/tech/feature/2001/03/27/media\\_tracker/index.html](http://archive.salon.com/tech/feature/2001/03/27/media_tracker/index.html)., page 1).

If, on the other hand (in contrast to the situation in the section on election/restriction), the claims are still directed to the same invention (and the new limitations are not meant to add anything new so as to have nodes mean anything), then the scope of the claims have not changed. Thus, see the previous Office Action for the rejection of the claims.

### ***Conclusion***

The art made of record and not relied upon is considered pertinent to applicant's disclosure. The art disclosed general background.

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### ***Points of Contact***

**Any response to this action should be mailed to:**

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Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

(571) 273-8300, (for formal communications intended for entry)

**Or:**

(571) 273-3836 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Jung whose telephone number is (571) 272-3836 or Kambiz Zand whose telephone number is (272) 272-3811.

/David Y Jung/

Acting Examiner of Art Unit 2134

David Jung

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Patent Examiner

5/15/08